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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/599,895

10/12/2006

Sandra Maria Salles Hanszmann

AP119-06

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24118 7590 10/16/2009
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EXAMINER

PRATT, HELEN F

ART UNIT

PAPER NUMBER

1794

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DELIVERY MODE

10/16/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/599,895	Applicant(s) HANSZMANN, SANDRA MARIA SALLES	
	Examiner Helen F. Pratt	Art Unit 1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 July 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 5-11 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 5-11 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>10- 12-06, 7-27-09</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 5 -10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Aunt Clair's Fruit Lax, in view of Natural Health Web, dated 1999-2003, (see page 3 for date), Natural Health Web dated 2009 (used for supportive information only).

Aunt Claire's Fruit Lax discloses that it is known to use dried plums, figs, molasses, figs, dates, raisins, and an acidulating agent, i. e. apple cider vinegar in a composition to prevent constipation (pages 1-3). National health Web says that "Aunt Claire's Fruit Lax" has been used for over 50 years (under answer 3, page 2). Claim 5 differs from the reference in the particular amounts of ingredients. Natural Health Web 2003 discloses that pears, papaya and figs contain laxative characteristics. Even though the amounts are not stated, generally one would eat enough until the right results were obtained. Four or five figs, and part of a medium sized papaya can be eaten (pages 1-3). Cooking can be within the skill of the ordinary worker. Often foods are not cooked, but can be cooked to make them more easily eaten. Certainly, it would have been within the skill of the ordinary worker to use particular amounts for children. Thickening agents are well known in any recipe for their known function of thickening the product. The further ingredients read on zero amounts. Attention is invited to In re Levin, 84

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USPQ 232 and the cases cited therein, which are considered in point in the fact situation of the instant case, and wherein the Court stated on page 234 as follows:

This court has taken the position that new recipes or formulas for cooking food which involve the addition or elimination of common ingredients, or for treating them in ways which differ from the former practice, do not amount to invention, merely because it is not disclosed that, in the constantly developing art of preparing food, no one else ever did the particular thing upon which the applicant asserts his right to a patent. In all such cases, there is nothing patentable unless the applicant by a proper showing further establishes a coaction or cooperative relationship between the selected ingredients which produces a new, unexpected, and useful function. In re Benjamin D. White, 17 C.C.P.A. (Patents) 956, 39 F.2d 974, 5 USPQ 267; In re Mason et al., 33 C.C.P.A. (Patents) 1144, 156 F.2d 189, 70 USPQ 221. Therefore, it would have been obvious to use figs and other fruits which are known to relieve constipation in the composition Aunt Claire's Fruit Lax for their known functions.

Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over the above combined references as applied to claims 5-10 above, and further in view of Choi.(US 2006/0188636).

Claim 11 further requires cooking the fruits 10 to 30 minutes, straining them, and where necessary cooking with indirect heat. Choi discloses cooking papaya fruit for at least 30 minutes in water, sieving the fruit, and making a puree of the papaya fruit (abstract and 0029, 0035, 00040). The further processing limitations such as washing and removing seeds are seen as normal processing procedures within the skill of the ordinary worker. Cooking other fruits is well known as in cooking prunes. Pasteurization is disclosed which is at the claimed temperature

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range, as is citric acid (0035, 0036). Preservatives such as sodium benzoate are well known and are routinely used in processing foods. No patentable distinction is seen in the cooking time.

The final product has a water content of 77% and a sugar content of 16-24% (0043, last sentence). Added sugar can be from 5-40% (0044). Therefore, various Brix can be made using the composition of Choi. The reference discloses cooking the mixture, adding citric acid to a pH of 3.8, straining the mixture and filling it into glasses, closing the glasses and pasteurizing.

Nothing critical is seen in using a Bain Marie or an autoclave, which reduces bacteria, and pasteurization as disclosed at this time. The reference discloses that papaya can be used to treat constipation (0028). These fruits containing fiber and sugar, make them also useful for laxative purposes as stated in the specification. Therefore, it would have been obvious to use known fruits for their known function of providing fiber, sugar, vitamins and minerals to the diet.

Claim 6 further requires adding particular amounts of pear and sugar or concentrated apple juice, and claim 7 dried plum and sugar or concentrated apple juice, acidulants, acids and preserving agents, claim 8 further requires a mixed fruit concentrate. Choi discloses only cooking papaya, but cooking any fruit is well known, as in cooking prunes, apples as in stewed apples, and on. Plums and apricots are notoriously well known fruit as in fruit compotes. All fruits have some laxative functions, as they contain sugars and fibers which aid the body in this regard. The particular amounts are seen as being within the skill of the worker to adjust for laxative purposes, and taste and flavor, as it is well known how each fruit taste. Nothing unobvious is seen as in In re Levin in using known ingredients to make a composition. No co-action of ingredients is seen to make a new product. Nothing is seen that this composition has any more affect on a person than eating cooked fruit. The use of acids, acidulants and preserving

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agents is well known in the canning art, as the fruit could not be preserved. Therefore, it would claim 9 and 10 particular amounts of dried plum and apricot. It would have been obvious to use known fruits and sugars and preservatives to make the claimed product.

Claim 11 requires normal process procedures of cleaning, peeling and deeding the fruit, and cooking such for 30 minutes until tender. This how most fruit is cooked. Murat et al. disclose that it is known to cook fruits in a basket with steam in a pressure cooker (0001, 0009, and 0017). It would have been within the skill of the ordinary worker to strain the fruit if one did not want fibers and seeds in the product. Heating is done by a pressure cooker. It would have been within the skill of the ordinary worker to heat at a particular temperature using a particular Brix. Thickening is well known as in making pies, flour can be added to thicken the mixture. Choi cooks, strains and pasteurizes fruit (abstract and claims 1-9). Certainly, bottling the product is known in general and pasteurizing in an autoclave is known, as that is the function of an autoclave. Therefore, it would have been obvious to cook, strain, and pasteurize fruit as shown by Choi in the process of the combined references.

ARGUMENTS

Applicant's arguments filed 7-27-09 have been fully considered but they are not persuasive. Applicants state that the selected fruits have been tested as to time, temperature and method of cooking the fruits. However, the use of fruit as a laxative, is ages old, and it would have been within the skill of the ordinary worker to arrive at the right formula, as in a recipe. Applicant argues that the Choi reference only uses *Carica papaya* and is not toward a mixture of fruit. However, it is used in combination with especially Aunt Claire's fruit lax which uses prunes, vinegar (an acidulant,) and figs. The reference to the product being used for over 50

years shows gives a good date. Fibers are also well known in the production of any laxative mixture, as in FIBER SOL (TRADEMARK).

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Helen F. Pratt whose telephone number is 571-272-1404. The examiner can normally be reached on Monday to Friday from 9:30 to 6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Keith Hendricks, can be reached on 571-272-1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Helen F. Pratt/
Primary Examiner, Art Unit 1794

10-9-09